

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**JOHNNY L. McGOWAN, JR. v. HOWARD CARLTON, WARDEN**

**Appeal from the Criminal Court for Johnson County  
No. 5246 Robert E. Cupp, Judge**

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**No. E2008-01993-CCA-R3-HC - Filed October 20, 2009**

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The pro se Petitioner, Johnny L. McGowan, Jr., appeals from the trial court's order denying his petition for the writ of habeas corpus. The State has filed a motion requesting that this court affirm the order pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to state a cognizable claim for habeas corpus relief. The State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed  
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Johnny L. McGowan, Jr., Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Leslie E. Price, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

According to the judgments attached to the petition, the Petitioner was convicted on his guilty pleas in January 1994 of aggravated arson, arson, and two counts of vandalism over \$500, in Rutherford County cases 27902, 27903, 27904, and 27905. He received an effective twenty-year sentence as a Range I offender. The records of this court reflect that since that time, the Petitioner has engaged in extensive litigation attacking his convictions.

In the present case, the Petitioner alleges that the judgments against him are void because he was sentenced pursuant to the plea agreement as a Range I offender, despite the fact that the trial court was on notice by virtue of the prosecutor's statement on the record in case 27910 that the Petitioner was a Range II offender. The petition sought to have the judgments set aside in order for the Petitioner to pursue proving his innocence of the crimes. He also sought to subpoena the records of the conviction proceedings in order to prove his habeas corpus claims. The trial court dismissed the petition as failing to state a cognizable claim for habeas corpus relief.

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel Newsome v. Henderson, 424 S.W.2d 186, 189 (1969). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A court may summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

The Petitioner’s convictions are not void based upon illegality of the sentences. Our supreme court has held that a plea bargain may include a sentence that is outside the offender’s range classification as long as it remains within the overall punishment range for the conviction offense. See Hoover v. State, 215 S.W.3d 776, 779 (Tenn. 2007); State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1997). The Petitioner’s sentences are within the overall punishment range for the offenses of which he was convicted. He is not entitled to relief. The trial court did not err in dismissing the petition.

Because the petition failed to state a cognizable claim, the records the Petitioner sought to subpoena were not necessary for the trial court to adjudicate the petition. The trial court did not err in disposing of the petition without allowing the Petitioner to obtain these records.

Upon consideration of the pleadings, the record, and the applicable law, the court concludes that the Petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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JOSEPH M. TIPTON, PRESIDING JUDGE